

# **EXHIBIT A**

## KIRKLAND & ELLIS LLP

AND AFFILIATED PARTNERSHIPS

333 South Hope Street  
Los Angeles, California 90071

Robyn E. Bladow  
To Call Writer Directly:  
(213) 680-8634  
robyn.bladow@kirkland.com

(213) 680-8400  
www.kirkland.com

Facsimile:  
(213) 680-8500

December 18, 2015

### Via Electronic Filing

Clerk of the Court  
United States District Court  
for the Southern District of Illinois  
750 Missouri Avenue  
East St. Louis, IL 62201

Re: *Eike, et al. v. Allergan, Inc., et al.*, Case No. 3:12-cv-01141-DRH-DGW

Dear Clerk:

*McMahon v. LVNV Funding, LLC*, No. 15-8018, \_\_ F.3d \_\_, 2015 WL 8119786 (7th Cir. Dec. 8, 2015) and *Bell v. PNC Bank, Nat'l Ass'n*, 800 F.3d 360 (7th Cir. 2015) stand for the proposition that a class may be certified where class members' damages are not "identical," so long as damages can be readily determined in individual hearings. But Defendants already acknowledged in their Opposition that this is the applicable standard. *See* Doc. 186 at 28 (citing *Butler*). *McMahon* and *Bell* are just examples of the Seventh Circuit applying it. *See McMahon*, 2015 WL 8119786, at \*3 (denial of class certification inappropriate where damages were "capable of ministerial determination"); *Bell*, 800 F.3d at 379-80 (affirming certification of employee class not paid overtime wages for hours worked in excess of 40 hours/week).

Those cases are far different from this one. This Court cannot manageably resolve damages issues in individual hearings later. Indeed, the alleged "damages" are so variable that Plaintiffs themselves have conceded measuring them for all class members would be "impossible," and their own expert has conceded that he cannot accurately measure damages *even for the named Plaintiffs*. Doc. 176 at 27-32. With no proper way to readily determine damages in individual hearings, controlling authority holds that class certification is inappropriate. *See, e.g., Espenscheid v. DirectSat USA, LLC*, 705 F.3d 770, 776 (7th Cir. 2013) (decertifying class where there was "no way" to calculate individual damages).

Plaintiffs also submit *Mullins v. Direct Digital, LLC*, 795 F.3d 654 (7th Cir. 2015). While *Mullins* rejects the reasoning of Third Circuit case law Defendants cited in Section IV.G of their Opposition, it also reaffirms that courts must "consider the likely difficulties in managing a class action" at the certification stage, and that "[i]f faced with what appear to be unusually difficult manageability problems at the certification stage, district courts have discretion to insist

KIRKLAND & ELLIS LLP

December 18, 2015

Page 2

on details of the plaintiff's plan for notifying the class and managing the action." *Id.* at 658, 664. The manageability problems Defendants identified (*see* Doc. 186 at 43-45) are thus still a barrier to certification under Seventh Circuit authority.

Respectfully submitted,

/s/ Robyn E. Bladow

Robyn E. Bladow

Shaun Paisley

KIRKLAND & ELLIS LLP

333 South Hope Street

Los Angeles, CA 90071

Telephone: (213) 680-8400

Facsimile: (213) 680-8500

*Counsel for Pfizer Inc.*

Cc: All counsel of record (by ECF)